

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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BEFORE THE CHIEF PROCUREMENT OFFICER

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DECISION

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In the Matter of Protest of:

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CASE No. 2009 - 124

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Coast 2 Coast Cleaning Service

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Department of Transportation

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POSTING DATE:

RFQ No. Q259108

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Annual Contract for Janitorial Services

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Specialized Bridge Office, N. Charleston)

July 17, 2009

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Coast 2 Coast Cleaning Service. With this request for quotations (RFQ), the Department of Transportation (SCDOT) attempts to procure an annual contract (for up to 5 years) for janitorial services for the Specialized Bridge Office located at 2695 Rourk Street, North Charleston, SC. In its letter, Coast 2 Coast Cleaning Service protested SCDOT's contract award notification to B & B Enterprises alleging that it was "very unfair that the Bids can't be opened publicly and it takes a month to notify the company who will receive the bid . . . [t]hat's just to [sic] much time."

As the legal issues to be decided are clear, this decision is posted without the benefit of a hearing.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

B & B Enterprises bid a price of \$6,147.84 per year for a total potential award of \$30,739.20 for 5 years. The bids tabulated as follows:

<u>Bidder</u>	<u>Bid Amount per Year</u>
IFS Group	\$3,300.00 ¹
B & B Enterprises	6,147.84
RG Properties of SC	6,152.04
Synergy D/B/A Task Masters	6,560.04
Wright 4 U Services	6,576.00
Coast 2 Coast Cleaning	6,660.00
Clearview Janitorial Services	9,468.00
Grounds Maintenance	10,500.00

On July 1, 2009, SCDOT issued a purchase order to B & B Enterprises for \$6,147.84 annually for a potential total value of \$30,739.20 for five years.

CONCLUSIONS OF LAW

B & B Enterprises bid a total price for the potential five-year term of \$30,739.20, which equals the value of the contract award that SCDOT issued on July 1, 2009. South Carolina Code Section 11-35-4210(1)(d), which grants the CPO authority to consider protested awards, reads “The rights and remedies granted by subsection (1) and section 11-35-4410(1)(b), the protest provisions, are not available for contracts with an actual or potential value of up to fifty thousand dollars.”

DETERMINATION

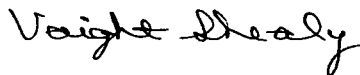
¹ SCDOT rejected the bid of IFS Group as nonresponsive to the requirements of the RFQ. As IFS Group has not filed a protest, the CPO has not determined the appropriateness of that action by SCDOT.

As the value of the awarded contract in this procurement was less than \$50,000, it is not protestable under SC Code Ann. 11-35-4210. Therefore, the CPO lacks jurisdiction to hear this matter. The protest is dismissed.

In the event the Procurement Review Panel disagrees with this determination, I will address the protest issues raised by Coast 2 Coast.

Regarding the allegation concerning SCDOT not conducting a public bid opening, the Code does not require state agencies to conduct public openings for solicitations less than \$50,000, as was the case here.

Regarding the allegation that SCDOT took too long to announce its award (a month), Coast 2 Coast wrote, "The bids already have a total, and theirs [sic] no reason for the delay." However, Coast 2 Coast's statement ignores the requirements of the Code that prior to issuing an award, state procurement officials must determine the apparent low bidder responsive (he complied with the requirements of the solicitation) and responsible (he is capable of successfully performing the contract). The CPO cannot comment on the question of whether SCDOT should have required thirty days or not to answer those questions, but SCDOT is expressly required by law to consider each award prudently. Regarding the thirty days consideration period, the RFQ clearly required bidders to offer and hold their prices for 30 days, which put them on notice that the process of considering the bids received might take the thirty days to which Coast 2 Coast objects.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

July 17, 2009

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).